



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 203469

PRELIMINARY RECITALS

Pursuant to a petition filed on October 18, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services regarding Medical Assistance (MA), a hearing was held on November 17, 2021, by telephone.

The issue for determination is whether the agency correctly determined Petitioner's monthly premium to be \$4274.00, effective November 1, 2021, because it divided a royalty payment equally per month over the course of the year rather than only including the royalty payment in the month it was received.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County and is enrolled in the Nursing Home Long-Term Care plan.
2. Petitioner first applied for MA in November 2020 and used her 2019 tax filing to verify her royalty income, which noted she received two royalty payments in 2019, totally \$31,181. Based on that information, Petitioner was approved for the Nursing Home Long-Term Care Plan with a monthly patient liability.
3. On October 12, 2021, the agency received Petitioner's 2020 tax filing information and noted the royalty payments in 2020 were higher than in 2019. The royalty payments were then divided among the 12 months in the year and counted as income to determine patient liability for 2021. Based on this income amount, the agency determined that Petitioner's monthly patient liability would increase.
4. On October 14, 2021, the agency sent a notice to Petitioner informing her that, effective November 1, 2021, her patient liability each month would be increasing to \$4,274.00 per month due to the royalty payment that she received.
5. Petitioner filed a timely appeal. Petitioner's daughter testified on her behalf as her representative. Petitioner's daughter noted that the royalty payments are not consistent and she would like the payment to be considered only during the month it is received and not spread out during the year, or, at minimum, considered every six months. Petitioner's daughter testified that she understood that the agency is bound by policy. However, she noted that this is a hardship for her mother and financially not feasible.

DISCUSSION

After an institutionalized person has been found eligible for MA, the agency must calculate a "cost of care" or patient liability. Patient liability is the amount that s/he will pay each month to partially offset the cost of nursing home services with the MA program paying the balance. The liability amount is typically calculated by subtracting from the recipient's income, any health insurance premium costs, support payment costs, home maintenance costs, expenses for court-ordered guardians or protective placements, and a statutory personal needs allowance. The funds remaining after these deductions are considered is determined to be available for payment to the nursing home by the recipient. See Medicaid Eligibility Handbook (MA Handbook), §27.7. 1; see also Wis. Stat. §49.45(7)(a), Wis. Adm. Code § DHS 103.07(1)(d), and 42 CFR §435.725.

In this case, Petitioner receives royalty income periodically. However, the amount varies. Petitioner's daughter testified that there are no guarantees regarding what her mother will receive and she does not believe that the tax returns for a prior year should determine the liability payment for an entire year. Rather, Petitioner's daughter believes the income should be reviewed every six months.

The agency representative argued that per policy, the agency must prorate the royalty amount over the course of 12 months, which then determines Petitioner's income for purposes of establishing a patient liability amount. Exhibit 4.

Petitioner's daughter testified that she understands the agency is bound by policy, but she does not know where to turn as her mother cannot afford the increased patient liability. To the extent that Petitioner's daughter is making an argument for fairness or equity, I do not have the authority to render decisions based on fairness arguments or equity. Administrative law judges are bound by the applicable regulations and rules with no authority to disregard or amend those rules in the interests of fairness. *See Oneida*

County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). However, if Petitioner's financial situation change, meaning, her next royalty payment is substantially lower, she can contact the agency at that time to see if her patient liability can be reduced. She does not have to wait an entire year for her next tax filing. The agency can amend the patient liability if changes in income warrant that. And a dramatic decrease in the next royalty payment would result in a substantial decrease in income, which would then reduce Petitioner's patient liability.

CONCLUSIONS OF LAW

The agency correctly determined Petitioner's patient liability based on Petitioner's royalty income.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

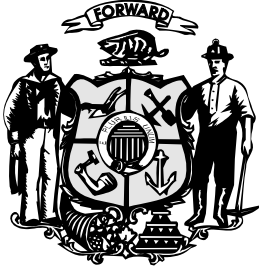
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of January, 2022

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 10, 2022.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability